

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LISA J. McLAUGHLIN

Claimant

VS.

PRESBYTERIAN MANORS, INC.

Self-Insured Respondent

Docket No. 1,014,108

ORDER

Respondent requests review of the February 9, 2004 preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh.

ISSUES

The ALJ found that the claimant sustained an accidental injury on October 10, 2003. He also found the injury arose out of and in the course of her employment in the manner she described during the preliminary hearing, and that she provided timely notice. Accordingly, the ALJ ordered the respondent to pay claimant's medical bills incurred on her own as unauthorized medical expenses, subject to the limits of K.S.A. 44-510h, with the exception of the emergency room treatment sought the day of the injury. Because of the emergent nature of those services, prior authorization was not practical, so the ALJ ordered those paid as authorized medical.

The respondent requests review of all of the ALJ's findings contained within the preliminary hearing Order. Highly summarized, respondent contends claimant's testimony is inconsistent not only with her own medical records, but also with the testimony of respondent's witnesses. Therefore, respondent adamantly maintains the ALJ erred in finding a compensable claim and in awarding claimant medical compensation.

Claimant argues that she has met her burden of proof to establish her right to medical treatment, that her injuries did arise out of and in the course of her employment, and that she provided timely notice as required by the Workers Compensation Act. Thus, claimant argues the ALJ's preliminary hearing Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Appeals Board (Board) makes the following findings of fact and conclusions of law:

An ALJ's preliminary award under K.S.A. 44-534a is not subject to review by the Board unless it is alleged that the ALJ exceeded his or her jurisdiction in granting the preliminary hearing benefits.¹ Alternatively, "[a] finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the Board."² Any other issues cannot be considered at this juncture of the claim.

Respondent alleges a variety of issues for appeal but pursuant to the authority discussed above, the Board has limited jurisdiction to address only the above listed issues. As for the balance of respondent's issues for appeal, specifically the propriety of awarding medical compensation and the payment of medical bills, the Board finds it has no jurisdiction to consider those issues at this stage of the proceedings.³ Therefore, that portion of respondent's appeal is dismissed.

Claimant alleges she was injured while moving a tray of juice glasses on October 10, 2003. It is undisputed that claimant left work early that morning complaining of back pain. Claimant admits she did not tell her supervisor at that time that she had injured herself at work because she thought she would improve. Thereafter, on October 16, 2003, an accident report was prepared and describes an on-the-job injury while filling juice glasses.

Respondent's witness, Becky Brownback, maintains claimant denied any work-related injury on October 10, 2003. Respondent further points to the medical records as further justification for reversing the ALJ's conclusions.

Both the ALJ and the Board acknowledge that some of the records note claimant denied a work injury or denied a lifting incident altogether. Nonetheless, after hearing all of this evidence, the ALJ concluded claimant was not untruthful but merely had some difficulty communicating clearly. He even stated that "[t]he contradictions in the record more probably owe to poor communication than deception."⁴ Based upon this conclusion,

¹ K.S.A. 2003 Supp. 44-551(b)(2)(A).

² K.S.A. 44-534a(a)(2)(Furse 2000).

³ *Ruch v. Keim Transportation*, No. 167,666,1997 WL 570029 (Kan. WCAB July 24, 1997).

⁴ ALJ Order(Feb. 9, 2004) at 1.

he found an accidental injury and that proper notice was given. Medical compensation was awarded and respondent was ordered to pay the emergency room bills from October 10, 2003 as authorized treatment and the balance of the bills were to be paid as unauthorized, subject to the statutory \$500 limit under K.S.A. 44-510h.

After reviewing the evidence offered by the parties, the Board finds no reason to reverse the ALJ's findings as to the underlying compensability issues. An injury arises out of employment if it arises out of the nature, conditions, obligations and incidents of the employment. Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the case.⁵ In this instance, analysis of these issues is necessarily intertwined with the credibility of the claimant and respondent's witnesses.

The Board frequently defers to an ALJ's assessment of credibility and will do so in this matter. While claimant may not be an exceptional historian, it is uncontroverted that she left work early due to a back injury on October 10, 2003. She sought immediate treatment on that date. An accident report was filled out less than seven days later. The ALJ concluded she was not deceptive. Rather, she was a poor communicator. The Board agrees and affirms the ALJ's findings as to the underlying issues of compensability.

WHEREFORE, it is the finding, decision and order of the Board that the respondent's appeal of the Order of Administrative Law Judge Kenneth J. Hursh dated February 9, 2004, is dismissed in part and affirmed in part.

IT IS SO ORDERED.

Dated this _____ day of April 2004.

BOARD MEMBER

c: William W. Hutton, Attorney for Claimant
Kathleen N. Wohlgemuth, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁵ Spies v. Cessna Aircraft Co., No. 1,011,551, 2003 WL 22994506 (Kan. WCAB Nov. 17, 2003).